

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Marshall Johnson
LeRoy Koppendrayer
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Review of the 2001 Annual
Automatic Adjustment of Charges for All Gas
and Electric Utilities

ISSUE DATE: November 14, 2002

DOCKET NO. G,E-999/AA-01-838

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

Between August 31, 2001 and September 13, 2001, five gas utilities (Great Plains Natural Gas Company, Interstate Power, Northern Minnesota Utilities, Reliant Energy Minnegasco, and Peoples Natural Gas Company) filed 2000-2001 Annual Automatic Adjustment Reports and various other annual filings, including the following: annual true-up filings, pursuant to Minn. Rules, part 7825.2910, subpart 4; annual reports on their fuel procurement policies and actions, pursuant to Minn. Rules, part 7825.2800; annual auditor's reports, pursuant to Minn. Rules, part 7825.2820; a brief statement of its opinion on the impact of market forces on gas costs for the coming year, pursuant to Minn. Rules, part 7825.2830; and notices of the availability of these reports to interveners in each utilities' last two general rate cases, pursuant to Minn. Rules, part 7825.2840. Northern States Power Company d/b/a Xcel Energy filed the same items on September 4 and 26 and December 28, 2001.

On September 24, 2001, at the request of the Department of Commerce (the Department), the Commission extended by notice the initial comment deadline to February 22, 2002.

On February 22, 2002, the Department submitted its Report of the 2001 Annual Automatic Adjustment Reports (the Department's Report) and filed response comments on June 20, 2002.

On April 8, 2002, Peoples Natural Gas Company and Northern Minnesota Utilities, Divisions of UtiliCorp United Inc.¹ filed Reply Comments and filed Supplementary Reply Comments on August 16, 2002 .

The Commission met on October 10, 2002 to consider this matter.

¹ UtiliCorp United Inc. subsequently changed its name to Aquila, Inc.

FINDINGS AND CONCLUSIONS

I. JURISDICTION AND REFERRAL FOR CONTESTED CASE PROCEEDINGS

The Commission is required to hold an annual meeting to review the utilities' automatic adjustment of charges, pursuant to Minn. Rules, part 7825.2850.²

In the course of this annual meeting, the Commission reviews other issues related to fuel costs, including: 1) the utilities' annual reports on their fuel procurement-related activities (for example, for the gas utilities, their gas purchasing practices and other cost minimization activities)³ and 2) the utilities' annual reports on their fuel cost projections.⁴

With regard to NMU's and Peoples's gas purchasing practices, the Commission finds that it cannot satisfactorily resolve all questions regarding the issues raised by the Department and UtiliCorp in this matter on the basis of the parties' filings and oral arguments. The Commission, therefore, will refer these questions to the Office of Administrative Hearings for contested case proceedings.

II. ISSUES TO BE ADDRESSED

Parties shall address the following issues in the course of the contested case proceedings ordered herein:

- (1) whether Peoples had adequate justification for its gas purchasing decisions;
- (2) whether the Commission should deny Peoples' recovery of \$645,778, alleged excess gas cost, from the Gas Daily Average (GDA) purchases from

² Minn. Rules, part 7825.2850, Annual Commission Meeting, states: "The Commission shall annually conduct a separate meeting to review the automatic adjustment of charges reported herein."

³ Minn. Rules, part 7825.2800, Annual Reports; Policies and Actions. states: "All public utilities shall file annually on September 1 of each year the procurement policies for selecting sources of fuel and energy purchased, dispatching policies, if applicable, and a summary of actions taken to minimize cost including conservation actions for gas utilities."

⁴ Minn. Rules, part 7825.2830, Annual Five-Year Projection, states: "By September 1 of each year, electric utilities shall submit to the Commission a five-year projection of fuel costs by energy source by month for the first two years and on an annual basis thereafter. By September 1 of each year, each gas utility shall submit to the Commission a brief statement of its opinion on the impact of market forces on gas costs for the coming year."

Peoples-MN Northern ratepayers⁵ or should allow recovery of this cost for the 2000-01 gas year;

- (3) whether Northern Minnesota Utilities (NMU) had adequate justification for its purchasing decisions; and
- (4) whether the Commission should deny recovery of \$85,579, alleged excess gas cost, from the GDA purchases from NMU ratepayers or should allow recovery of this cost for the 2000-01 gas year.

The parties may also raise and address other issues relevant to this matter.

III. PROCEDURAL OUTLINE

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Kenneth A. Nickolai. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7640.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

⁵ Peoples' Minnesota ratepayers consist of three subsets: Peoples-MN *Northern* ratepayers, Peoples-MN *Great Lakes* ratepayers, and Peoples-MN *Viking* ratepayers. [Emphasis added.] Each subset is named according to which pipeline (Northern, Great lakes, or Viking) that provides the gas that serves those ratepayers. Peoples has established a PGA for each subset of its ratepayers. The gas purchases in question flowed through the Northern pipeline to Peoples-MN Northern ratepayers and the costs of these purchases would be recovered by Peoples through the Peoples-MN Northern PGA from Peoples-MN Northern ratepayers.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Gerald Dasinger, Public Utilities Financial Analyst, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 297-1847; or Cassandra O'Hern, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 282-5725.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not-public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are the Companies and the Minnesota Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held in this case on Wednesday, November 20, 2002 at 1:30 p.m. in the Small Hearing Room, Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101. Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the prehearing conference and to file their petitions to intervene as soon as possible.

IV. APPLICATION OF ETHICS IN GOVERNMENT ACT

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

V. Ex Parte Communications

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings, as set forth above.
2. A prehearing conference shall be held on Wednesday, November 20, 2002 at 1:30 p.m. in the Small Hearing Room, Public Utilities Commission, 121-7th Place East, Suite 350, St. Paul, Minnesota 55101.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Review of the 2001 Annual
Automatic Adjustment of Charges for All Gas
and Electric Utilities

MPUC Docket No. G,E-999/AA-01-838

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Kenneth A. Nickolai, Office of Administrative Hearings, Suite, 1700, 100 Washington Square,
Minneapolis, Minnesota 55401; (612) 341-7640

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____